

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

_____	)	
Jason R. Bender,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 06-772 (GMS)
	)	
Corporal Steven Robertson,	)	
	)	
Defendant.	)	
_____	)	

**JOINT STATUS REPORT**

Plaintiff Jason R. Bender ("Plaintiff") and Defendant Corporal Steven Robertson ("Defendant"), submit their Joint Status Report pursuant to the June 13, 2007, Order regarding scheduling conference.

1. **Jurisdiction and Service.** Plaintiff is, and at all times relevant to this case was, a citizen of the United States residing in the State of Delaware. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343(a)(3) and the aforementioned statutory and constitutional provisions. Supplemental jurisdiction to consider state law claims arises under 28 U.S.C. § 1367.

Defendant is, and at all times relevant to this case was, a Delaware State Trooper stationed in Troop 7.

Defendant does not challenge jurisdiction or venue, nor does he claim that service of process was ineffective.

2. **Substance of the Action.**

Plaintiff:

Plaintiff alleges that Defendant, by shooting at the Plaintiff's vehicle, used force that was unreasonable, excessive, willful and malicious and without provocation or justification violating the Plaintiff's Fourth and Fourteenth Amendment protections. Additionally, Plaintiff alleges that the Defendant, in repeatedly punching the Plaintiff in conjunction with a traffic stop, willfully, intentionally and maliciously inflicted assaults and batteries upon the Plaintiff.

Defendant:

Plaintiff, who was driving while under the influence of alcohol, attempted to run over Corporal Robertson, who was directing him to stop next to a marked police car with emergency lights activated. Instead, the plaintiff fled the scene, driving at a high rate of speed, with Corporal Robertson in pursuit. When Plaintiff's vehicle was forcibly stopped by other officers, he attempted to flee and began fighting with the officers. Corporal Robertson assisted in the arrest, and was himself injured by the Plaintiff. Plaintiff pled guilty to Driving Under the Influence and was incarcerated.

3. **Identification of Issues.**

A. Whether Defendant violated Plaintiff's Fourth and Fourteenth Amendment protections in effectuating a traffic stop with use of force that was unreasonable, excessive, willful and malicious and without provocation or justification.

B. Whether Defendant willfully, intentionally and maliciously inflicted assaults and batteries upon Plaintiff.

C. Did the Plaintiff sustain any recoverable damages as a result of any wrongful conduct of the Defendant?

D. Did the Plaintiff knowingly fail to stop at the direction of a police officer and then flee, such that reasonable efforts to forcibly apprehend him were justified?

E. Did the Plaintiff resist arrest by fleeing and by fighting with police officers, such that reasonable use of force to arrest was justified?

4. **Narrowing of Issues.** At this stage of the litigation, the issues appear sufficiently narrow.

5. **Relief.** Plaintiff seeks compensatory and punitive damages against Defendant.

6. **Amendment of Pleadings.** The parties do not anticipate amending the pleadings.

7. **Joinder of Parties.** The parties do not anticipate seeking to join any additional parties.

8. **Discovery.** Plaintiff expects to take written discovery and depose defendant and various other individuals involved in the Plaintiff's arrest and the subsequent investigation of the arrest. The subjects of discovery include: (1) the incident itself; (2) the State Police policies and procedures with respect to (a) use of deadly force, (b) vehicle pursuit, and (c) use of force in effecting arrests; and (3) the defendant's training with respect to these issues.

The Defendant expects to pursue limited written discovery and to depose the Plaintiff and any eyewitnesses or experts identified by the Plaintiff. Discovery will be limited to establishing plaintiff's flight, fighting, and degree of intoxication, and the injury he caused.

9. **Estimated trial length.** The parties anticipate a two to three day trial.

10. **Jury Trial.** Plaintiff seeks a trial by jury.

11. **Settlement.** The parties have not engaged in settlement discussions. The defense does not anticipate making any offer of settlement, and believes that mediation would not be fruitful.

12. **Other matters.** There are no other matters for the Court's consideration at this time.

13. **Statement.** Counsel for the parties have conferred about each of the above matters.

Respectfully submitted,

STATE OF DELAWARE

SMITH, KATZENSTEIN & FURLOW, LLP

/s/ Ralph K. Durstein, III  
Ralph K. Durstein, III (#912)  
Department of Justice  
Carvel State Office Bldg.  
820 North French Street  
Wilmington, Delaware 19801  
(302) 577-8510 (Phone)  
(302) 577-6499 (Fax)  
[ralph.durstein@state.de.us](mailto:ralph.durstein@state.de.us)

Attorneys for Defendant

/s/ Etta R. Wolfe  
Laurence V. Cronin (#2385)  
Etta R. Wolfe (#4164)  
800 Delaware Avenue, 10<sup>th</sup> Floor  
P.O. Box 410  
Wilmington, Delaware 19899  
(302) 652-8400 (Phone)  
(302) 652-8405 (Fax)  
[erw@skfdelaware.com](mailto:erw@skfdelaware.com)

BRADY, RICHARDSON, BEAUREGARD &  
CHASANOV

Andre M. Beauregard (#2427)  
401 Rehoboth Ave.  
P.O. Drawer B  
Rehoboth Beach, DE 19971  
(302) 226-2270 (Phone)  
(302) 226-2450 (Fax)

Attorneys for Plaintiff

Dated: June 18, 2007

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Joint Status Report was caused to be served this 18<sup>th</sup> day of June 2007 on the following by eFile:

Ralph K. Durstein, III, Esquire  
State of Delaware  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

/s/ Etta R. Wolfe

Etta R. Wolfe (ID No. 4164)